



# The State Bar of California

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## AGENDA ITEM

### **MARCH 10 – Minutes Approval – January 21–22, 2021, Meeting**

Regular Meeting of the Board of Trustees  
Zoom

Open Session Minutes  
Friday, January 22, 2021

<b>Commence:</b>	9:00 a.m.
<b>Adjourn:</b>	5:12 p.m.
<b>Chair:</b>	Chair Sean SeLegue and Vice-Chair Ruben Duran <sup>1</sup>
<b>Secretary:</b>	Sarah Cohen
<b>Members Present:</b>	Mark Broughton, Hailyn Chen, José Cisneros, Juan De La Cruz, Sonia Delen, Christine Gonong, Joshua Perttula, Melanie Shelby, Arnold Sowell, Brandon Stallings, Mark Toney
<b>Members Joined in Progress:</b>	None
<b>Members Absent:</b>	None

## **10 MINUTES**

Open Session Minutes – September 24, 2020

Open Session Minutes – September 25, 2020

Open Session Minutes – November 19, 2020

Moved by Cisneros, seconded by Stallings.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Gonong, Perttula, Sowell, Stallings

Abstain – Shelby, Toney

Noes – n/a

***Minutes adopted.***

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<sup>1</sup> Both observed practice that chair votes only to break or create a tie.

### **30 CHAIR'S REPORT – *none given***

#### **30-1 Approval of Revised Board Committee, Liaison and Special Assignments**

**RESOLVED**, that the Board of Trustees ratify the attached revised 2020–2021 Board of Trustees Committee Assignments and revised 2020–2021 Board of Trustees Liaison and Special Assignments.

Moved by Delen, seconded by Stallings.

Ayes – Broughton, Cisneros, De La Cruz, Delen, Gonong, Perttula, Shelby, Sowell, Stallings, Toney

Noes – n/a

Absent – Chen

***Motion carries.***

#### **30-2 Revised Multiyear Schedule of Board of Trustees Meetings – *informational***

### **40 STAFF REPORTS**

#### **41 Executive Director – *none given***

### **50 CONSENT**

*Pulled from consent for discussion: Agenda Item 50-1, Subsection 3 (ExamSoft Worldwide Inc. contract). All other items on the consent agenda, including 5001 (moved from closed to open session,) were voted on as proposed and approved.*

#### **50-1 Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6**

1. For translation services, with: Language Line Solutions
2. For Microsoft licenses for SQL server, with: Crayon Software Experts

#### **50-2 Report of Action Taken by Executive Committee Approving Specified Contracts Pursuant to Business and Professions Code Section 6008.6**

1. For Information Technology Management Services, with: RPR Impact, LLC

**WHEREAS**, the contract listed herein required execution before the next regularly scheduled meeting of the Board of Trustees; and

**WHEREAS**, on January 8, 2021, the Board Executive Committee approved said contract; it is hereby

**RESOLVED**, that the Board of Trustees affirm the action taken by the Board Executive Committee on behalf of the Board.

#### **54-111 Lawyer Assistance Program Oversight Committee: Appointment of Member**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves the recommended appointments for a member of the Lawyer Assistance Program Oversight Committee.

#### **54-121 Amendments to Rules of Procedure Governing Fee Arbitration Award Enforcement Proceedings: Return from Public Comment and Request for Approval**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Regulation and Discipline Committee, adopt the proposed amendments to Rules of Procedure of the State Bar, rules 5.360 through 5.371, as set forth in Attachment A, and it is

**FURTHER RESOLVED**, that the proposed amendments to the above rules become effective on March 1, 2021.

#### **54-141 Reserve Policy Revisions**

**RESOLVED**, that upon recommendation of the Finance Committee, the Board of Trustees approves the proposed amendments to the Reserve Policy as proposed by the Chief Financial Officer.

#### **5001 Approval of Contracts Relating to the Preparation, Grading or Administration of the California Bar Examination or the First-Year Law Students' Examination**

1. For calculation of data and production reports
2. For ad hoc psychometric and statistical analytic projects
3. For evaluations and reports relating to Testing Accommodations Petitions (vendor #1)
4. For evaluations and reports relating to Testing Accommodations Petitions (vendor #2)

Moved by Cisneros, seconded by Delen.

Ayes – Broughton, Cisneros, De La Cruz, Delen, Gonong, Perttula, Shelby, Sowell, Stallings, Toney

Absent – Chen

Noes – n/a

***Motion carries.***

#### **50-1 Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6 – *pulled from consent for discussion***

3. For remote proctoring licenses for the February 2021 Bar Examination, with ExamSoft Worldwide Inc.

Moved by Cisneros, seconded by De La Cruz.

Ayes – Broughton, Cisneros, De La Cruz, Delen, Gonong, Perttula, Sowell, Stallings  
Abstain – Shelby  
Noes – Toney  
Absent – Chen

***Motion carries.***

## **100 REPORTS OF BOARD COMMITTEES**

*The member presenter is presumed to be the “mover” of the recommended action. No second is required because the motion is brought by the committee.*

### **110 Board Executive Committee**

#### **112 Approval of 2021 Legislative Priorities**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, approve the State Bar’s 2021 legislative priorities, **as presented by staff** and the priorities from previous years shown in Tables 1 and 2 **with the exception of the proposed addition of Business and Professions Code section 6054.1; and it is**

**FURTHER RESOLVED**, that the Board of Trustees refer the proposed addition of Business and Professions Code section 6054.1 to the Committee on Regulation and Discipline for further discussion.

Ayes – Broughton, Cisneros, De La Cruz, Delen, Gonong, Perttula, Shelby, Sowell, Stallings, Toney  
Noes – n/a  
Absent – Chen

***Motion carries.***

### **120 Regulation and Discipline Committee**

#### **122 Proposed State Bar Rule Setting Forth Procedure for Responding to Complaints against State Bar Court Judges**

**RESOLVED**, that the Board of Trustees amend the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service to add Section 23 as set forth in Attachment A to this item.

Ayes – Broughton, Cisneros, De La Cruz, Delen, Gonong, Perttula, Shelby, Sowell, Stallings, Toney

Noes – n/a  
Absent – Chen

***Motion carries.***

## **700 MISCELLANEOUS**

### **701 Approval of State Bar Final 2021 Budget Pursuant to Business and Professions Code Section 6140.1**

**Presenter:** Kevin Harper, State Bar Chief Financial Officer

**RESOLVED**, that the Board of Trustees hereby ~~adopt~~ **approves** the 2021 Final Budget in the form presented to the Board this day; and it is

**FURTHER RESOLVED**, that the Board of Trustees hereby authorizes staff to make technical adjustments and corrections to the 2021 Final Budget prior to submitting it to the Legislature by February 28, 2021.

Moved by Cisneros, seconded by Delen.

Ayes –Cisneros, De La Cruz, Delen, Gonong, Perttula, Shelby, Sowell, Stallings, Toney  
Noes – n/a  
Absent – Broughton, Chen

***Motion carries.***

### **702 Proposed Revisions to State Bar Rule 4.90 Regarding Testing Accommodations: Request to Circulate for Public Comment**

**Presenter:** Lisa Cummins, State Bar Program Director, Programs Division

**RESOLVED**, that the Board of Trustees direct staff to make available for a 45-day public comment period proposed amended Rules of the State Bar, Rule 4.90, attached hereto as Attachment A; and it is

**FURTHER RESOLVED**, that this authorization for release of public comment is not and shall not be construed as a statement or recommendation of approval of the proposed amended Rule of the State Bar.

Moved by Stallings, seconded by Gonong.

Ayes –Cisneros, De La Cruz, Delen, Gonong, Perttula, Shelby, Sowell, Stallings, Toney  
Abstain – Broughton

Noes – n/a

Absent – Chen

***Motion carries.***

### **703 Approval of Legal Specialization Examination Fee Reduction**

**Presenter:** Audrey Ching, State Bar Program Director, Programs Division

**RESOLVED**, that the Board of Trustees approve the 2021 Legal Specialist Examination registration fee schedule, as described above, and direct staff to make changes to the Schedule of Fees and Deadlines to implement these changes as set forth in Attachment A.

Moved by Stallings, seconded by Cisneros.

Ayes –Cisneros, De La Cruz, Delen, Gonong, Perttula, Shelby, Sowell, Stallings, Toney

Recused – Broughton, SeLegue

Noes – n/a

Absent – Chen

***Motion carries.***

### **704 Ad Hoc Commission on Discipline System: Appointment of Members**

**Presenter:** Lisa Chavez, State Bar Program Director, Mission Advancement & Accountability Division

**RESOLVED**, that the Board ~~of Trustees-Executive Committee~~ appoint the following officers and members to serve on the Ad Hoc Commission on the Discipline System, for a term expiring on June 30, 2022, unless earlier terminated or extended by subsequent Board action:

#### **Officers:**

1. Ruben Duran, Chair
2. Sean SeLegue, Vice-Chair

#### **Members:**

1. Edward Lear
2. Ellen Pansky
3. Ray Buenaventura
4. Shanae Buffington
5. Karen Bell
6. Eloise Rosenblatt
7. Sarah Good

8. Linda Schneider
9. Shelan Joseph
10. Alexia Mayorga
11. Jenna Jones
12. Jerry Larkin
13. Melanie Lawrence
14. Steven Moawad
15. Michelle Anderson
16. Cynthia Nakao
17. Brandon Stallings
18. Judge W. Kearse McGill
19. Judge Phong Wang

**FURTHER RESOLVED**, that the Board ~~of Trustees~~ **Executive Committee** authorize the chair of the Ad Hoc Commission on the Discipline System to solicit and appoint members to fill current vacancies and vacancies that may arise prior to the commission's completion of a final report; and it is

**FURTHER RESOLVED**, that the Board ~~of Trustees~~ **Executive Committee** authorize the chair of the Ad Hoc Commission on the Discipline System to designate subcommittees with subcommittee officers; and it is

**FURTHER RESOLVED**, that the Board ~~of Trustees~~ **Executive Committee** authorize the chair of the Ad Hoc Commission on the Discipline System to appoint additional nonvoting advisors as needed to assist the commission in carrying out its charter.

~~**FURTHER RESOLVED**, that the Board Executive Committee recommend that the Board of Trustees, upon recommendation of the Board Executive Committee approve the appointments to the Ad Hoc Commission on the Discipline System and the authority granted to the chair of the commission to appoint members, subcommittees with subcommittee officers, and additional nonvoting advisors as needed.~~

~~**Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:**~~

~~**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee approve the appointments to the Ad Hoc Commission on the Discipline System and the authority granted to the chair of the commission to appoint members, subcommittees with subcommittee officers, and additional nonvoting advisors as needed.~~

Moved by Cisneros, seconded by De La Cruz.

Ayes – Broughton, Cisneros, De La Cruz, Delen, Gonong, Perttula, Shelby, Sowell, Toney

Recused – Stallings

Noes – n/a

Absent – Chen

**Motion carries.**

## **705 District Attorney Campaign Contributions: Consideration of Amendment to the Rules of Professional Conduct, Ethics Opinions, and Other Options**

*Taken out of order as the first item of open session business.*

**Presenters:** Andrew Tuft, State Bar Supervising Attorney, Programs Division  
Stephen M. Bundy, Advisor, Committee on Professional Responsibility and Conduct

**1. ~~Should the Board decide to pursue consideration of a rule of professional conduct as proposed in the June 1, 2020, district attorneys' letter, it is recommended that the Board of Trustees approve the following resolution:~~**

**RESOLVED,** that the Board of Trustees directs the Committee on Professional Responsibility and Conduct to develop a rule of professional conduct prohibiting elected prosecutors—or prosecutors seeking election—from seeking or accepting political or financial support from law enforcement unions; and it is

**FURTHER RESOLVED,** that following development of the rule the Committee on Professional Responsibility and Conduct presents the proposed rule to the Board of Trustees together with an analysis of the compelling state interest addressed by the rule and how the rule is narrowly tailored to advance that state interest.

**2. ~~Should the Board decide to pursue the development of a rule of professional conduct as proposed by the ACLU, it is recommended that the Board of Trustees approve the following resolution:~~**

**RESOLVED,** that the Board of Trustees directs the Committee on Professional Responsibility and Conduct to develop a rule of professional conduct prohibiting elected prosecutors—or prosecutors seeking election—from personally soliciting contributions from any entity; and it is

**FURTHER RESOLVED,** that following development of the rule the Committee on Professional Responsibility and Conduct presents the proposed rule to the Board of Trustees together with an analysis of the compelling state interest addressed by the rule and how the rule is narrowly tailored to advance that state interest.



~~3. Should the Board decide to develop nonbinding guidance in the form of an ethics opinion addressing prosecutorial conflicts of interest under the Rules of Professional Conduct and related statutory provisions, or amendments to relevant Comments to the existing Rules of Professional Conduct concerning prosecutorial conflicts of interest, it is recommended that the Board of Trustees approve the following resolution:~~

~~RESOLVED~~, that the Board of Trustees directs the Committee on Professional Responsibility and Conduct to develop an ethics opinion analyzing prosecutorial conflicts under the Rules of Professional Conduct and related statutory provisions, and/or draft amendments to relevant Comments to the existing Rules of Professional Conduct concerning prosecutorial conflicts of interest.

4. Should the Board decide to monitor proposed legislation before taking any action, it is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees directs staff to monitor legislation **and to reach out to the Legislature to offer technical assistance** introduced in the first year of the 2021–2022 legislative session concerning the **restrictions on campaign contributions to candidates for elected prosecutorial office or limitations on prosecutorial offices based on recusal of prosecutors who receive** campaign contributions; and it is

FURTHER RESOLVED, that following the consideration of the Legislature’s activity on this issue during the 2021–2022 legislative session, the Committee on Professional Responsibility and Conduct is assigned to determine whether revisions to the Rules of Professional Conduct, or the development of an ethics opinion, would be appropriate.

~~5. Should the Board decide to develop guidelines for prosecutorial conduct similar to the standards developed by other associations, it is recommended that the Board of Trustees approve the following resolution:~~

~~RESOLVED~~, that the Board of Trustees directs staff to form a task force to consider whether to develop prosecutorial standards that considers both the ABA Criminal Justice Standards for the Prosecution Function and the National District Attorneys Association National Prosecution Standards; and it is

~~FURTHER RESOLVED~~, that if the task force decides to recommend the adoption of such standards that it prepare a recommended set of such standards for adoption and transmit them to the Board of Trustees; and it is

~~FURTHER RESOLVED~~, that staff is directed to prepare a proposed charter for the task force; and it is

~~**FURTHER RESOLVED**, that staff is directed to prepare a recommendation for the composition of the task force that includes (i) attorneys whose practice area is relevant to the subject matter, including prosecutors, criminal defense attorneys, constitutional law experts, and legal ethicists, (ii) representation from the executive, legislative, and judicial branches, and (iii) nonattorney members of the public.~~

Moved (Amended Resolution #4) by Perttula, seconded by Shelby.

Ayes – Broughton, Chen, Cisneros, Delen, Gonong, Perttula, Shelby, Sowell, Stallings

Recused – Toney

Noes – De La Cruz

***Motion carries.***

### **706 Updated State Bar Metrics**

**Presenters:** Donna Hershkowitz, State Bar Interim Executive Director  
Lisa Chavez, State Bar Program Director, Mission Advancement & Accountability Division

**RESOLVED**, that the Board of Trustees approve the list of updated State Bar Metrics as described in Attachment A; and it is

**FURTHER RESOLVED**, that the Board of Trustees direct State Bar staff to report on the State Bar Metrics three times a year.

Moved by Stallings, seconded by Delen.

Ayes – Broughton, Cisneros, De La Cruz, Delen, Gonong, Perttula, Shelby, Sowell, Stallings, Toney  
Absent – Chen

***Motion carries.***